

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRS Recovery, Inc., a Virginia  
Corporation, and DALE MAYBERRY,

Plaintiffs,

v.

JOHN LAXTON, aka  
johnlaxton@gmail.com, et al.

Defendants.

No. C 06-07093 CW

ORDER DENYING AS  
MOOT PLAINTIFFS'  
MOTION FOR LEAVE TO  
PROCEED IN REM  
(DOCKET NO. 9) AND  
DEFENDANTS' MOTION  
TO DISMISS (DOCKET  
NO. 12)

Plaintiffs CRS Recovery, Inc. and Dale Mayberry move, pursuant to 15 U.S.C. § 1125(d)(2)(A), for leave to proceed in rem against the Internet domain name RL.com. They also move, pursuant to Federal Rule of Civil Procedure 55(b), for an order entering a default judgment against Defendants John Laxton and Northbay Real Estate, Inc. (NRE). Defendants Laxton and NRE oppose the motion and separately move for an order dismissing the Complaint. Plaintiffs oppose the motion to dismiss. The matter was decided on the papers. The Court DENIES both motions as moot.

BACKGROUND

This case involves the alleged theft of two internet domain names from Mayberry. On July 23, 1995, Mayberry registered the domain name RL.com through Network Solutions, Inc. (NSI). First Amended Complaint (FAC) ¶ 10. NSI secured Mayberry's control of

1 the URL through his e-mail address, dale@MAT.net. Id. At that  
2 time, Mayberry was also the registrant of MAT.net. Id.

3 On December 19, 2003, Mayberry's attempt to renew the  
4 registration for MAT.net was denied, and its registration shifted  
5 to Beijing Sinonets Network & Telecom Co., Ltd. FAC ¶ 11. MAT.net  
6 was then transferred to BIZCN.com. Id. Between November 18, 2003  
7 and January 16, 2004, the new registrants used their control of  
8 MAT.net and the subordinate email address dale@MAT.net to transfer  
9 the registration of RL.com from Mayberry's NSI account to  
10 BIZCN.com. FAC ¶ 12. Mayberry asserts that the new registrants  
11 falsely impersonated him to complete the transfer. Id. Mayberry  
12 subsequently lost control over the domain name RL.com. Id.

13 A series of changes in RL.com's registration ensued,  
14 culminating with its transfer to Laxton in May, 2005. FAC ¶ 13-14.  
15 In July, 2005, Mayberry transferred his right, title and interest  
16 in RL.com to CRS for valuable consideration. FAC ¶ 15. This  
17 transfer included an understanding that CRS would transfer the  
18 registration of RL.com back to Mayberry upon recovery. Id.

19 Laxton is the sole shareholder of NRE. Laxton Declaration  
20 ¶ 1. NRE owns and operates RL.com as part of its business  
21 operations. Laxton Declaration ¶ 6. On May 6, 2005, Laxton paid a  
22 significant sum for the purchase of the RL.com domain name. Laxton  
23 Declaration ¶ 5. He asserts that the purchase was an honest  
24 transaction, and that he checked for domain name disputes with the  
25 World Intellectual Property Organization (WIPO) before purchasing  
26 RL.com. Id. He did not discover any disputes. Id.

27 On November 15, 2006, Plaintiffs filed their Complaint. The  
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1 fifth claim for relief requested leave to proceed in rem against  
2 the domain name RL.com. After unsuccessful attempts to serve  
3 Defendants personally, Plaintiffs' counsel mailed copies of the  
4 summons and complaint to North Bay Real Estate, Inc.'s P.O. Box and  
5 to Laxton's P.O. Box.<sup>1</sup> On January 26, 2007, Plaintiffs filed a  
6 motion to proceed in rem and have default judgment entered on the  
7 fifth claim. That same day, NRE and Laxton's counsel contacted  
8 Plaintiff's counsel, stating that Defendants had just retained him  
9 and that he needed an extension of time to review the case and file  
10 a responsive pleading. On February 15, 2007, Defendants Laxton and  
11 NRE moved to dismiss the Complaint. On March 17, 2007, Plaintiffs  
12 filed their opposition to the motion to dismiss, along with a  
13 "proposed" FAC.

14 The FAC asserts four claims for relief: (1) conversion and  
15 conspiracy to convert internet domain names from Mayberry; (2)  
16 intentional interference with contracts between Mayberry and NSI;  
17 (3) unfair competition in violation of California Business &  
18 Professions Code § 17200; and (4) declaratory relief under 28  
19 U.S.C. § 2201. FAC ¶ 19-43. The fifth claim for relief for leave  
20 to proceed in rem against the domain name RL.com is not included in  
21 the FAC.

#### 22 DISCUSSION

##### 23 I. Motion to Dismiss

24 Fed. R. Civ. P. 15(a) provides that "[a] party may amend the  
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26 <sup>1</sup>North Bay Real Estate, Inc. is not the same entity as  
27 Defendant Northbay Real Estate, Inc., and is not a party in this  
28 case.

1 party's pleading once as a matter of course at any time before a  
2 responsive pleading is served." Defendants have not filed a  
3 responsive pleading in this action. See Crum v. Circus Circus  
4 Enters., 231 F.3d 1129, 1130 n.3 (9th Cir. 2000) (a motion to  
5 dismiss is not a "pleading" within the meaning of Rule 15).  
6 Therefore, Plaintiffs need not seek leave to file their FAC.  
7 Because Plaintiffs have amended their Complaint, Defendants' motion  
8 to dismiss the original Complaint is DENIED as moot.

9 II. Motion to Enter Default on Fifth Claim for Relief

10 Because the fifth claim for relief is no longer at issue, the  
11 motion for leave to proceed in rem against the Internet domain name  
12 RL.com and to enter default judgment against Defendants Laxton and  
13 NRE is DENIED as moot.

14 Although it appears that Laxton and NRE were not served  
15 properly, their counsel has offered to accept service on their  
16 behalf. See Declaration of Val D. Hornstein in support of  
17 Defendants' opposition to Plaintiffs' motion. Defendants must file  
18 an answer or Rule 12(b)(6) motion within thirty days from the date  
19 of this order. The case management conference scheduled for May 4,  
20 2007 is continued until June 12, 2007, at 2:00 p.m. If Defendants  
21 file a motion to dismiss, the hearing on that motion shall be  
22 noticed for that same day.

23 IT IS SO ORDERED.

24 Dated: 3/28/07  
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CLAUDIA WILKEN  
United States District Judge